THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.07.2007

\+ WP(C) No.7756/2005

RAJINDER KUMAR MITTAL ...Petitioner

- versus -

GOVT OF NCT OF DELHI AND ANOTHER ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Mukesh Anand with Ms S. Tiwari and Ms Zeba Khan

For the Respondents : Ms Monika Sharma

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner seeks a direction to the respondents to deliver possession of industrial Plot No.287, Sector-3, Pocket-1, measuring 250 sq. metres in the Bawana Industrial Area, Delhi under the Relocation Scheme. It is stated that the petitioner had made 100% payment together with the interest as demanded by the respondent No.2 (DSIDC). The petitioner has also prayed that the respondents be restrained from allotting the said plot to any other person and to reserve the same for the petitioner.

2. On the first day, when this matter came up for admission, this court had directed that there would be a stay against the respondents from cancelling the allotment of the petitioner with regard to the said plot and also from allotting the same to any other person. The petitioner's case is that it had applied for an industrial plot under the Relocation Scheme. The application was accepted and the petitioner had made arrangements from the Delhi Financial Corporation for a loan. The petitioner had also made certain payments to the DSIDC through the Delhi Financial Corporation. But, since possession was not being given to the petitioner, the project which was to be started by the petitioner on the allotted land could not be taken up, as a result of which the Delhi Financial Corporation recalled the loan and the petitioner was compelled to request for cancellation of the allotment and refund of the amount already deposited alongwith interest. The said request had been accepted by DSIDC and the entire amount which had been deposited by the petitioner upto 30.07.2003 had been refunded. Thereafter, a revival scheme was started by the Delhi Financial Corporation in respect of revival of loans. The petitioner applied under that scheme and the Delhi Financial Corporation accepted the application. Consequent upon the reinstatement of the loan from Delhi Financial Corporation, the petitioner once again applied for allotment and purchase of the very same plot which it had given up earlier. Pursuant thereto, the petitioner deposited certain sums of money and even the interest on delayed payment. It is on the basis of this that the petitioner is claiming that the said

plot be handed over to the petitioner. On the other hand, the learned counsel for the respondent No.2/DSIDC submitted that earlier the plot had been allotted to the petitioner, but the petitioner had voluntarily sought cancellation of the allotment and refund of the amount. The same had been acceded to by the respondent No.2/DSIDC and the entire money deposited by the petitioner till that stage had been refunded. As such, the petitioner had lost its right to claim allotment. She further submitted that insofar as the revival scheme is concerned, that was of the Delhi Financial Corporation. As regards the re-allotment scheme of the respondent No.2/DSIDC, the petitioner did not qualify for the same inasmuch as the petitioner's case was one of voluntary withdrawal and not of cancellation consequent upon default in payment. It is only the latter category of cases which were considered for re-allotment.

3. As noted above, the petitioner had applied for allotment under the Relocation Scheme. The application was accepted and upto 30.07.2003, the petitioner had deposited a sum of Rs 6,67,500/-. By a letter dated 27.05.2003, the Delhi Financial Corporation which had sanctioned a term loan of Rs 7.37 lakhs to the petitioner, issued a notice for recall of the loan on the ground that the petitioner had failed to initiate action for implementing the project and this, according to the Delhi Financial Corporation, amounted to a breach of the terms and conditions of the loan. A copy of this notice for recall of the loan was also sent to the Chief Manager (DSIDC).

4. On 30.07.2003, the petitioner wrote to the respondent No.2 / DSIDC requesting for cancellation of the allotment and refund of Rs 6,67,500/- plus interest. It is interesting to note the exact expression used by the petitioner for seeking cancellation of the allotment and refund:-

> "Due to certain unavoidable circumstances we could not remit the next installment of the plot to you. Now, we understand that the allotment of plot has been cancelled by you due to non-payment."

This was followed by a further request for refund on 15.09.2003. In this letter, the petitioner, *inter alia*, stated as under:-

> "Due to some reason we are not interested for taking allotment / possession of the Industrial Plot under the re-location scheme. Under circumstances it is requested that the amount deposited by us may please be refunded with interest to us."

5. It is apparent from the aforesaid two letters that the petitioner was not interested in taking allotment / possession of the industrial plot under the Relocation Scheme and it is for this reason that the petitioner requested that the amount be refunded with interest. The respondent No.2/DSIDC permitted the voluntary withdrawal on 09.12.2003, as indicated in the original file pertaining to the petitioner at page No.C-119, which had been produced by the learned counsel for the respondent No.2/DSIDC. Thereafter, on 22.12.2003, an amount of Rs 6,91,386/- was refunded which included the interest amount also. The

said payment was made to the Delhi Financial Corporation for onward transmission to the petitioner as per the tripartite arrangement made between the petitioner, the Delhi Financial Corporation and DSIDC. The matter rested there.

6. Seven months later, on or about 16.07.2004, the DSIDC received payments of Rs 6,82,000/- and 3,68,000/- totalling to Rs 10.5 lakhs from Delhi Financial Corporation on account of the petitioner. Prior to this receipt, there is a letter written by Delhi Financial Corporation to DSIDC on 11/8.06.2004 with regard to this payment. Thereafter, a letter dated 18.08.2004 was written by the petitioner to DSIDC requesting for possession in view of the fact that full payment of Rs 10.5 lakhs had been made. This letter also contained a request for computing the interest on delayed payment. It is pertinent to note that a letter dated 22.09.2004 was issued by the DSIDC to the petitioner indicating the amount of interest on delayed payment to be Rs 2,81,723/-. According to the learned counsel for the respondent No.2, this letter was mistakenly issued because of the volume of cases that they were to handle and since the deposit had been received from Delhi Financial Corporation, it was treated as a routine case. The amount was also credited with the DSIDC on 12.10.2004. This had been paid earlier by the petitioner by a challan dated 11.10.2004. Thereafter, the petitioner sent a request for reconsideration on 22.10.2004 and this was followed by similar requests, none of which were responded to by the

respondent No.2/DSIDC. Therefore, the petitioner was constrained to file this writ petition which was filed on 29.04.2005. As noted above, the first hearing of this case was on 02.05.2005. That also happens to be the date of the letter issued by the DSIDC enclosing the refund of the entire amount of Rs 13,31,723/- made by the petitioner, as indicated above. The learned counsel for the respondent No.2/DSIDC stated that the very fact that the cheque was prepared on 25.04.2005 and bore the number 014489 indicated that the same had been done prior to the passing of the order of this court.

7. The entire issue in this writ petition is whether the petitioner is entitled to re-allotment of the plot. According to the petitioner, it is covered under the scheme whereby re-allotment was permitted to those persons whose earlier allotments could not fructify because of the re-call of their loans. According to the learned counsel for the respondent No.2/DSIDC, the petitioner did not fall under this scheme because he had sought voluntary withdrawal. There is no doubt that the loan amount was recalled by the Delhi Financial Corporation, as already indicated above. But there is also no doubt of the fact that the petitioner sought cancellation of the allotment and refund of the amounts paid by virtue of their two letters dated 30.07.2003 and 15.09.2003. In the first letter, the expression used by the petitioner was that he was seeking a cancellation because of "unavoidable circumstances". This was further accentuated by his second letter which is dated 15.09.2003 wherein the

petitioner specifically stated that "due to some reason he was not interested for taking the allotment / possession of the industrial plot under the re-location scheme". None of these letters indicated that the petitioner was withdrawing his allotment because of the recall of the loan by the Delhi Financial Corporation. Therefore, while it may be true that the Delhi Financial Corporation had recalled the loan, it was also equally true that the petitioner was for other reasons not interested in pursuing the allotment. That being the case, it becomes very clear that the petitioner voluntarily withdrew the allotment and, therefore, would not fall within the ambit of the scheme for re-allotment, as indicated by the respondent No.2/DSIDC.

8. In these circumstances, this writ petition is dismissed. The interim order, granted earlier, stands vacated.

July 16, 2007 **BADAR DURREZ AHMED**
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